BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ALLIED PROPERTIES)

Appearances:

For Appellant: George H. Koster, Attorney at Law

For Respondent: Crawford H. Thomas, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Allied Properties to proposed assessments of additional franchise tax In the amounts of $18,983.55, $15,644.76, $2,280.88 and $4,621.26 for the Income years 1952, 1953, 1954 and 1955, respectively.

The issue presented by this appeal is whether the appellant, which derived Income from sources both within and without California, was conducting a unitary business during the years under review.

Appellant, a California corporation, manages and Invests In real estate. During the relevant period appellant owned and operated twenty-eight commercial properties In this state, including the Clift and Plaza Hotels In San Francisco, and the Santa Barbara Biltmore Hotel. It owned farmland In San Joaquln County which produced agricultural products.

Appellant also owned and operated a cattle ranch In Nevada. Reef raised on the ranch was usually sold in Nevada, although In 1953 some animals were sold in California.

The daily activities of this ranch were carried on by employees living In Nevada. However, all policy decisions and decisions concerning the purchase or sale of livestock were made by appellant's president, Mr. Odell. Mr. Ode11 made frequent trips to oversee the Nevada operation. He personally negotiated most of the cattle sales either while visiting the ranch In Nevada, or by telephone from his office In San Francisco.

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Appellant maintained a Nevada bank account solely for the purpose of receiving the proceeds from livestock sales. All ranch expenditures were paid by draft on appellant's San Francisco bank. Ranch payroll checks were issued in San Francisco and the ranch records were kept by appellant% accounting department located In San Francisco. The financing of the Nevada operation was procured in California. All legal, auditing and tax services were centralized here and all Insurance was obtained In this. state.

On the, theory that the operation of Its Nevada ranch and its California interests constituted a single unitary business,. appellant has. always determined the portion of Its income attributable to California for franchise tax purposes by combining its entire Income and allocating It by use of the standard'three-factor formula of property, payroll and sales.

The Franchise Tax Board takes the position that appellant's operations were not unitary and that the California Income should be computed on a separate accounting basis without regard to losses sustained by the Nevada ranch.

The latest Judicial views on the unitary business question appear in two recent decisions by the California Supreme Court, Superior Oil Co. v. Franchise Tax Board,* 60. Cal. 2d [34 Cal. Rptr. 545, 366 P.2d 33] and Honolulu Oil Co. v. Franchise-Tax Board,* 60 Cal. 2d [34 Cal. Rptr. 552, 386 P.2d 40]. Both of those cases involved companies engaged in drilling for oil In various states and selling the oil within the particular state where it was produced. In each case, personnel were frequently shifted among the various areas of operation and there was centralization of many functions such as accounting, purchasing of equipment, supplies and Insurance and providing legal services. Relying upon tests announced In previous decisions, the court found that the respective businesses were unitary because there was unity of ownership, unity of operation and unity of use and because the operations within California depended upon or contributed to the operations elsewhere.

Appellant particularly relies upon those cases as well as upon a prior decision by us In an appeal Involving an oil company similar to the Honolulu Oil and Superior Oil companies. (Appeal of Holly Development Co., Cal. St. Bd. of Equal., May 20, 1959, 2 CCH Cal. Tax Cas. Par. 201-299, P-H State & Local Tax Serv. Cal. Par. 13207.)

A striking difference between the above cited cases and the one now before us lies In the fact that appellant

* Advance Report Citations: 60 A.C. 361 and 60 A.C. 373

conducted varied and distinct types of businesses. In the Honolulu 011 case the Supreme Court specifically noted that "Honolulu is not operating two distinct types of businesses,..."* And we observe that In the Superior 011 case, although the taxpayer derived income from a real estate subdivision project In California it made no claim that the project was a unitary part of Its oil business.

Because of a lack of uniformity, different types of businesses do not lend themselves to centralization of functions and advantages to be gained by centralization are at a minimum. For example, due to differences in the transactions to be recorded, there is little to be gained by centralizing the accounting functions of a hotel and a ranch. In a situation of that kind "centralized accounting" is an empty phrase. Where the businesses are distinct In nature, the mere recital of a number of centralized functions is not sufficient, In our opinion, to establish unity of operation, unity of use or contribution or dependency between the operations.

We do not mean to say that two operations such as a hotel and a ranch should never be treated as unitary. To Illustrate, If the ranch supplied beef to the hotel restaurant, there would be a degree of mutual dependency and contribution which might well call for unitary treatment. In the absence of any factor such as that, however, we conclude that the operation of appellant's cattle ranch In Nevada and the operation of hotels and other properties in California did not constitute a unitary business.

Appellant has made a point of the fact that respondent previously audited Its operations for the years 1944 to 1949, inclusive, when the operations were essentially the same as during the years under review, and did not then require a change to separate accounting. Even If It were assumed that the Franchise Tax Board was remiss in falling to advise appellant at that time that Its businesses in California and Nevada should be regarded as separate for tax purposes, the omission would not compel or justify a holding by us that the businesses are unitary.

Section 26424 of the Revenue and Taxation Code provides that:

> In the determination of any Issue of law or fact under this part, neither the Franchise Tax Board, nor any officer or agency having any administrative duties under this part nor any

*60 A.C. 380.

> court shall be bound by the determination of any other officer or administrative agency of the State. In the determination of any case arising under this part, the rule of res judicata is applicable only if the liability is for the same year as was involved in another *case* previously determined under this part.

This section demonstrates a legislative Intent that we should' decide cases such as the one before us wholly on their own merits, without regard to any determination by the Franchise Tax Board, express or implied, with respect to years other than those before us in the particular case.

O R D E R

Pursuant to the views expressed in the opinion of the board on file In this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED; pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Allied Properties to proposed assessments of additional franchise tax in the amounts of $18,983.55, $15.644.76, $2,280.88 and $4,621.26 for the Income years 1952, 1953, 1954 and 1955, respectively, be and the same is hereby sustained.

Done at San Francisco, California, this 17th day of March, 1964, by the State Board of Equalization.

Paul R. Leake, Chairman

John W. Lynch, Member

Geo. R. Reilly, Member

_____, Member

_____ Member

Attest: _____, Secretary